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IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT  
HAMILTON COUNTY, OHIO

FILED  
COURT OF APPEALS

MAR 30 2000

JAMES CISSELL  
CLERK OF COURTS  
HAMILTON COUNTY

STATE OF OHIO  
Appellee,

CASE NO: C-~~HAMILTON~~ 46

vs.

DEFENDANT'S OPPOSITION TO  
STATES MEMORANDUM IN OPPODITION  
OF MARCH 3, 2000.

REGINALD ALLEN  
Appellant,

Now comes defendant-appellant, hereby opposes the States Memorandum In Opposition, by and through this pro-se Opposition, defendant-appellant sets forth his claims that constitute plain error and hold sustantial grounds for reveiw, in all fairness and professional duty the said claims should have been advanced by appellate counsel.

Respectfully submitted,

Reginald Allen

Reginald Allen  
# 352-308  
P.O. Box 7010  
Chillicothe, Ohio 45601

FILED

2000 MAR 30 PM 2:30

JAMES CISSELL  
CLERK OF COURTS  
HAM. CNTY. OH

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Opposition and attached rider of Memorandum have been sent by regular U.S. Mail to the Hamilton County Prosecutors Office, at their last knownen address, on the 25 day of March 2000.

Reginald Allen  
Reginald Allen

EXHIBIT

TAMERIS

MEMORANDUM

The State allege's that defendant-appellant claims of ineffective appellate counsel has not been demonstrated.

In **Strickland v. Washington** (1984), 466 U.S. 688, " the court held that:

\* \* \* In any case presenting an ineffective claim, the performance inquiry must be weather counsels assistance was reasonable considering all the circumstance \* \* \* [ Id at 688 ]

Defendant-Appellant brings to attention his claim's (1) and (3), of his Application for Reopen pursuant to App R. 26 (B). Claim (1) Use of Defendant's prior bad acts; (2) Prosecutorial Misconduct. In **State v. Hirsh** (1998) 120 Ohio App 3d 294 [6-9] Nevertheless, the question remains how much detail about the prior conviction the state needed to make its point to the jury. As with all evidence, other acts evidence is subject to the relevancy and fairness requirements of Evid R.403 (A) and must be excluded if it probative value is substantially outweighing by the danger of unfair prejudice. Soke, supra 105 Ohio App 3d at 249, 663 N.E. 2d at1001; **State v. Matthews** (1984) 14 Ohio App. 3d 440, 442, 14 OBR 559, 561-562, 471 N.E. 2d 849, 851-852

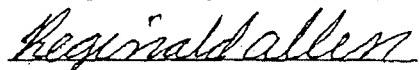
Defendant-Appellant's, appellate counsel could have argued the on appeal of prosecutorial misconduct, during either the guilt or penalty phase of trial as in **Scott v. Anderson** 58 F Supp 2d (N.D. Ohio 1998) 748 [8] para 5.

It has been well established by the courts as in *Jones v. Barnes* 103 S. Ct 3308 (1983) " which reversed, concluding under " *Anders v. California* 386 U.S. 738, 87 S.Ct 1396, 18 L.Ed. 2d 493 which held that an appointed attorney must advocate his clients cause vigorously and may not withdraw from a nonfrivolous appeal, appointed counsel must present on appeal all non-frivolous arguments requested by his client. In such the Court of Appeals held that respondent's counsel had not met this standard in that he had failed to present certain nonfrivolous claims.

#### CONCLUSION

WHEREFORE: Defendant-Appellant's claims have constituted the due process of review, if raised by appellate counsel, may or would have constituted reversible error on his appeal. For these reasons, the defendant-appellant respectfully request that the application for opening be set for full briefing.

Respectfully submitted,



Reginald Allen  
# 352-308 pro-se